HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No. 1742 of 2001

Between:

The District Collector,

Kakinada, East Godavari Dist.

and others .. Appellants

AND

P. Nagabhushana Rao and

others ..Respondents.

Counsel for the Appellants: Govt.Pleader for Land Acquisition

Counsel for the Respondents. None

Dated: March 14, 2006

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::JUDGMENT::

Per G.S.Singhvi, C.J.

This appeal, by District Collector, Kakinada, East Godavari District and two others,

is directed against order dated March 29, 2001 passed by the learned Single Judge in Writ Petition No. 4290 of 2001 whereby he directed the respondents in the writ petition (appellants herein) to forthwith make a reference under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act').

Although no one has appeared for the respondents, keeping in view the fact that the matter has remained pending in this Court for the last almost 5 years, we do not consider it proper to defer adjudication of the appeal.

A perusal of the record shows that possession of the land belonging to respondents was taken by Executive Engineer, Y.R.C. Division, Peddapuram in April 1991 without even initiating proceedings under the Act. The respondents represented against the forcible dispossession and demanded compensation, but their request was turned down. This led to the filing of Writ Petition No. 20359 of 1995. They also filed W.P.M.P.No.24993 of 1995 for interim relief. By an order dated April 19, 1996, this Court directed the non-petitioners (appellants herein) to pay 80 per cent of the market value of the land to the respondents.

During the pendency of the aforementioned writ petition, the non-petitioners initiated acquisition proceedings and in that view of the matter, the writ petition was disposed of on March 30, 1998 with the direction to the concerned authority to pass award within three months. In compliance of the court's order, the Land Acquisition Collector passed award dated January 13, 1999. After some time, the respondents filed application under Section 18 of the Act. The Revenue Divisional Officer-cum-Land Acquisition Officer, Kakinada (appellant no.2) vide proceedings No. (B)/36/94 dated March 12, 1999 refused to make reference on the ground that the claimants had accepted compensation without protest.

The respondents challenged the rejection of their application for reference in Writ Petition No. 4290 of 2001. The Learned Single Judge relied on the Judgment of the Division Bench in **Special Deputy Collector, L.A. Medak v. N.Sangaiah** and held that the solitary reason assigned by the Revenue Divisional Officer for refusing to

make reference is legally unsustainable. He held that filing of application by the claimants within the period of limitation prescribed for that purpose was indicative of their dissatisfaction with the award made by the Land Acquisition Officer and acceptance of compensation would be treated as one made under protest.

The appellants have challenged the correctness of the order of the learned Single Judge mainly on the ground that acceptance of compensation by the claimants should be treated as waiver of their right to seek reference under Section 18 of the Act and the learned Single Judge gravely erred by relying on the theory of implied protest.

When the appeal was listed for admission hearing on November 12, 2001, the Division Bench passed the following order:

> "Having regard to the submission that there is a divergence of opinion in the decisions rendered by this Court and having regard to the question as to whether the claimants who failed to protest at the time of receiving the compensation can file application within the stipulated time seeking a reference to the Civil Court and whether acceptance of the amount without protest amounts to waiver of the right to seek reference under Section 18 of the Land Acquisition Act, 1894, we are of the view that the matter should be heard by a Full Bench.
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> Office to place the papers before the Hon'ble the Chief Justice for obtaining orders on administrative side."

The reference made to the Full Bench has since been decided vide Judgment dated September 19, 2003, rendered in Writ Appeal No. 1742 of 2001 and batch. The operative part of that Judgment reads as under:

> "In the view we have taken, we answer the reference holding that in the absence of any manner of protest having been specified in the Act and the time when protest is to be lodged, act of filing of an application seeking reference to Civil Court within the period of limitation prescribed under Section 18 of the Act will impliedly infer that the claimant/person interested had accepted the amount with protest. Not expressly lodging protest at the time of receiving amount in such circumstance would not amount to waiver of the right to seek reference under Section 18 of the Act."

Learned Government Pleader fairly states that the respondents had filed application for reference within the period of limitation and there is no other impediment in making reference.

In view of the statement of the learned Government Pleader and the judgment of the Full Bench, it must be held that the view taken by the learned Single Judge on the legality of order dated January 13, 1999 passed by the Revenue Divisional Officer is correct and does not call for interference.

In the result, the appeal is dismissed. We would have saddled the appellant with costs, but refrain from doing so because no one has appeared on behalf of the contesting respondents.

As a sequel to the dismissal of the appeal, we direct the competent authority to make the reference within one month from the date of receipt of a copy of this order, in case the needful has not been done so far in compliance of the direction given by the learned Single Judge.

G.S.SINGHVI, C.J.

March 14, 2006

G.BHAVANI PRASAD, J.

Note:

A copy of this order be sent to the respondents

by registered post so that they may prosecute

their cause in the reference Court.

/B.O/

GRR